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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,465	04/19/2004	Terry L. Turner	0275S-510COB	2992
27572	7590	10/17/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			CHUKWURAH, NATHANIEL C	
P.O. BOX 828			ART UNIT	
BLOOMFIELD HILLS, MI 48303			PAPER NUMBER	
3721				
DATE MAILED: 10/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

TLM

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/827,465	TURNER ET AL.
	Examiner	Art Unit
	Nathaniel C. Chukwurah	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 16 September 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 23-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 23-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 April 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Terminal Disclaimer***

The terminal disclaimer filed on 9/16/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Patent No. 6,729,413 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23-25, 27-31, 33, 34 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Habedank et al. (US 6,223,835).

With regard to claim 23, Habedank et al. discloses a mechanism and a power tool comprising: a housing (3) including a handle (2) and a base extending from the bottom of the handle portion (2) to form a terminus (distal end of the housing); a frame (2) in the base, a cavity (void section housing spring, 39, 41 and void section between rails 36, 37) in the frame; a member (rails 36,37) for receiving a member (54, 55 channels) on the battery pack (50); a biasing member (38 spring) in the cavity extending from end wall, which ejects the battery pack; and a mechanism (41, interior of cap 39) for retaining the biasing member.

With regard to claim 24, Habedank et al. shows a pair of opposing wall (wall housing the rails 36, 37) and adjoining wall (area housing the front region of 16).

With regard to claim 25, Habedank et al. shows a receiving member (8, 9) including a pair of rails (36, 37) on each side walls; and opposing one another.

With regard to claims 27, Habedank et al. shows a helical spring (38).

With regard to claim 28, Habedank et al. shows biasing member (38) extending from the end wall as shown in Figure 7.

With regard to claim 29, Habedank et al. discloses a power tool comprising: a housing (3) including a motor portion (1); a handle portion (2) adjacent the motor portion (1) and a base portion (distal end of the housing) at the bottom of the handle portion forming a terminus; a motor (M), an output (7) coupled with the motor, an activation member (5), a battery pack (50), a mechanism on the base portion of the housing (see figs. 3, and 5) for receiving the battery pack; a frame (2), a cavity (void section housing the spring, 39, 41 and void section between rails 36, 37), a member (rails 36,37) for receiving a member (54, 55 channels) to couple the battery pack (50) with the housing, a biasing member (38, 39) and a mechanism (41) for retaining the biasing member in the cavity (void section housing spring, 39, 41).

With regard to claim 30, Habedank et al. shows a pair of opposing wall (wall housing the rails 36, 37) and adjoining wall (area housing front region of 16).

With regard to claim 31, Habedank et al. shows receiving member (8, 9) including a pair of rails (36, 37) on each side walls; and opposing one another.

With regard to claim 33, Habedank et al. shows a helical spring (38).

With regard to claim 34, Habedank et al. shows biasing member (38) extending from the end wall as shown in Figure 7.

With regard to claim 37, Habedank et al. shows the biasing member (38) inherently, partially ejects the battery pack.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 32, 35, 36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habedank et al.

With regard to claims 26, 32, 35 and 38, Habedank et al. does not expressly disclose mating rails on the battery pack. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide mating rails on the battery pack since such feature is critical for suspending the battery pack on the tool.

With regard to claim 36, Habedank et al. does not expressly disclose battery pack rails including an upper portion, lower portion and a channel between the upper and lower portions.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide such features on the battery pack since such feature is critical for suspending the battery pack on the tool.

***Response to Arguments***

Applicant's arguments with respect to claims 23-38 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claim 23 and 29, applicant argues that Habedank et al. does not teach the cavity at the bottom of the tool handle. The Examiner agrees with applicant's argument, however the applicant does not claim a cavity at the bottom of the tool handle.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (571) 272-4457. The examiner can normally be reached on M-F 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NC

October 12, 2005.



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700